

**Letter of Findings: 03-20210033
Penalty and Interest
For Tax Periods 2019 and 2020**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Out-of-state business was not entitled to refund because it did not timely file and remit tax on or before the due date of the return. As such, penalty and interest were properly imposed.

ISSUE

I. Tax Administration - Penalty and Interest.

Authority: IC § 6-3-4-8; IC § 6-8.1-3-17; IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 15-11-2](#).

Taxpayer protests the Department's refund denial and the assessment, claiming that it is entitled to the full refund of overpayment.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, conducted business in Indiana. For several tax periods under tax years 2019 and 2020, Taxpayer did not timely file the required monthly returns, such as Form WH-1, or Form WH-3 (including the Wage Statements it issued to its employees) and/or remit tax it withheld on wages paid to its Indiana employees. In addition to interest, a penalty was assessed for each tax period in question.

In 2021, Taxpayer filed its 2020 Annual Withholding Reconciliation form (Form WH-3), requesting a refund of \$115.26. Subsequently, the Indiana Department of Revenue ("Department") processed Taxpayer's filing and issued a proposed assessment of \$41.73, in addition to denying Taxpayer's refund claim.

Taxpayer protested the refund denial and the assessment. This Letter of Findings results. Further facts will be provided, as necessary.

I. Tax Administration - Penalty and Interest.

DISCUSSION

Taxpayer filed its 2020 Form WH-3, requesting a \$115.26 refund. The Department, upon reviewing Taxpayer's request, denied Taxpayer's refund request, and notified Taxpayer that Taxpayer has an outstanding balance due.

In this instance, the Department denied Taxpayer's refund claim and issued an assessment. Thus, as a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State*

Every employer is required to withhold taxes on payments of wages it pays to its employees pursuant to IC § 6-3-4-8, which states in part as follows:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department.

...

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

- (1) the total amount of wages paid to the employer's employees;
- (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
- (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
- (4) the amount of income tax, if any, imposed under [IC 6-3.6](#) and deducted therefrom in accordance with this section; and
- (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under [IC 6-3.6](#), withheld from the employees, on the forms prescribed by the department. In addition, the employer shall file Form WH-3 annual withholding tax reports with the department not later than thirty-one (31) days after the end of the calendar year.

...

(g) The provisions of [IC 6-8.1](#) relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

Taxpayer in this instance claimed that it overpaid \$115.26. However, the Department records showed that Taxpayer failed to timely file the required monthly returns - WH-1 or WH-3 forms - and/or remit tax it withheld on wages paid to its Indiana employees. In addition to interest, a penalty was assessed for each tax period in question. As a result, Taxpayer has an outstanding balance due.

Pursuant to IC § 6-8.1-10-1(e), the Department is only permitted to waive the interest under IC § 6-8.1-3-17(c), (e), IC § 6-8.1-10-2.1(k), and IC § 6-8.1-5-2. Taxpayer in this instance provided no documentation to support its request for the waiver. Thus, the Department does not have the authority to waive the interest imposed.

The Department may assess a negligence penalty if the taxpayer "(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment; (3) incurs, upon examination by the department, a deficiency that is due to negligence; [or] (4) fails to timely remit any tax held in trust for the state" IC § 6-8.1-10-2.1(a).

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." *Id.* The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, Taxpayer did not provide documents to affirmatively establish that its failure to timely file the required returns and/or pay tax was not due to negligence.

In short, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof.

FINDING

Taxpayer's protest is respectfully denied.

April 13, 2021

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